

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

RICHARD W. HENDERSON

§

VS.

§

CIVIL ACTION NO. 1:09cv937

RIZALINO REYES, ET AL.

§

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Richard W. Henderson, an inmate at the Stiles Unit, proceeding *pro se*, brought the above-styled lawsuit pursuant to 42 U.S.C. § 1983.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends this action be dismissed without prejudice for want of prosecution.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes Plaintiff's objections are without merit. Plaintiff is responsible for the payment of the initial partial filing fee and has not paid the fee as ordered. The statement of Plaintiff's prisoner account submitted with the complaint shows Plaintiff had sufficient funds to pay the initial partial filing fee assessed in this action. The TDCJ has established procedures whereby an inmate may obtain the certified statement of his inmate trust account and authorize the payment of filing fees. *See Morrow v. Collins*, 111 F.3d 374 (5th Cir.

1997). A notice to inmates was provided by TDCJ, informing all inmates of the procedure. *Id.* Further, a review of the TDCJ inmate locator reveals that Plaintiff is no longer confined in the Texas Department of Criminal Justice. Plaintiff, however, has failed to provide the court with a current address at which he may be contacted. Thus, Plaintiff has failed to diligently prosecute this action.

#### O R D E R

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

So **ORDERED** and **SIGNED** this **18** day of **November, 2010**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge